

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT,  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

DR. JAMES ERIC MCDONOUGH,

CASE NO.: 19-06869 CA (15)

Plaintiff,

vs.

CITY OF HOMESTEAD,  
a Florida municipal Corporation,

Defendant.

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**CITY OF HOMESTEAD'S MOTION TO STAY DISCOVERY  
PENDING THE CITY'S RESPONSE TO THE ALTERNATIVE  
WRIT AND THE COMPLETION OF THE INITIAL HEARING**

Defendant, City of Homestead ("City"), by and through undersigned counsel and pursuant to Rule 1.280(c), Florida Rules of Civil Procedure, hereby moves for entry of an order staying discovery, including the depositions of Elizabeth Sewell ("Sewell"), Fernando Morales ("Detective Morales"), and Alejandro Murguido ("Officer Murguido") and responses to Plaintiff's First Set of Interrogatories, First Request for Production, and First Request for Admission until after the initial hearing in this matter. In support thereof, the City states as follows:

1. On February 18, 2019, Plaintiff, sent an email to the City wherein he made a public records request for "all records, documents, leave slips, etc. ad infinitum related to any leave taken by Murguido between April 9th, 2013 and April 9th 2015. This includes sick leave, vacation leave, holiday leave, administrative leave and comp time" (the "Public Records Request").
2. On March 8, 2019, Plaintiff served the City with his Petition for Writ of Mandamus in this action, which seeks to compel production of the records responsive to the Public Records Request.
3. On March 12, 2019, Plaintiff served the City with his Amended Petition for Writ of Mandamus.

4. On March 13, 2019, the Court issued an Alternative Writ in Mandamus, which directed the City to serve its written defenses to the Amended Petition within 20 days of service of the Alternative Writ. As such, the City's response is due on or before April 2, 2019.

5. The Alternative Writ further states that *after* the City files its response, "the Court will schedule an immediate hearing as required by section 119.11(1), Florida Statutes."

6. As the City's response to the Alternative Writ is not yet due, the immediate hearing has not yet been set.

7. Nevertheless, on March 14, 2019, Plaintiff served the City with his First Set of Interrogatories, First Request for Production, and First Requests for Admissions. Plaintiff's discovery requests are attached hereto as composite **Exhibit "A"**.

8. On March 19, 2019, Plaintiff served the City with Notices of Video Deposition, *unilaterally* setting the depositions of Sewell, Detective Morales, and Officer Murguido for April 1, 2019. The notices are attached hereto as composite **Exhibit "B"**. Each of the notices indicate that the depositions "will be videotaped by Matthew Oakey ...." *Id.*<sup>1</sup>

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<sup>1</sup> Mr. Oakey, a personal friend of Plaintiff, is not a certified legal video specialist and, therefore, is not authorized to video the depositions. Moreover, Plaintiff, who is proceeding pro se, is not entitled to videotape depositions, as he is not authorized under the rule to take custody of the video. Specifically Rule 1.380 states:

(4) Any deposition may be recorded by videotape without leave of the court or stipulation of the parties, provided the deposition is taken in accordance with this subdivision.

(A) Notice. A party intending to videotape a deposition must state in the notice that the deposition is to be videotaped and must give the name and address of the operator. Any subpoena served on the person to be examined must state the method or methods for recording the testimony.

(B) Stenographer. Videotaped depositions must also be recorded stenographically, unless all parties agree otherwise.

(C) Procedure. At the beginning of the deposition, *the officer before whom it is taken* must, on camera: (i) identify the style of the action, (ii) state the date, and (iii) swear the witness.

9. In light of the foregoing, the City respectfully requests that this Court enter a stay of discovery directed at the Defendant pending the City's response to the Alternative Writ and resolution of the immediate hearing. A stay will afford the Court an opportunity to review the City's response, hear argument of the parties at the immediate hearing, and potentially rule on whether or not Plaintiff is entitled to the requested mandamus relief, while avoiding the significant time, costs and resources that would otherwise be spent on potentially unnecessary discovery. Prevailing Florida law is clear that such relief is appropriate.

10. "Applicable rules and case law make clear that trial courts have broad discretion in overseeing discovery matters and in granting and denying motions for protective order." *Remington Lodging & Hospitality, LLC v. Southernmost House Ltd.*, 206 So. 3d 764, 766 (Fla. 3d DCA 2016) (citing Fla. R. Civ. P. 1.280 and *Rojas v. Ryder Truck Rental, Inc.*, 625 So. 2d 106, 107 (Fla. 3d DCA 1993)).

11. Pursuant to Rule 1.280(c), this Court may "make any order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires." Fla. R. Civ. P. 1.280(c). Moreover, Rule 1.280(c) allows courts to control the timing and sequence of discovery for the convenience of the parties and in the interests of justice. *Id.*

12. Generally, Florida Rule of Civil Procedure 1.280 allows for the discovery of matters that are relevant and admissible, or reasonably calculated to lead to admissible evidence. *See* Fla. R. Civ. P. 1.280(b)(1), (b)(3). *See also City of Gainesville v. Scotty's Inc.*, 489 So. 2d 1196 (Fla. 1st DCA 1986).

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(D) Custody of Tape and Copies. ***The attorney for the party requesting the videotaping of the deposition must take custody of and be responsible for the safeguarding of the videotape***, must permit the viewing of it by the opposing party, and, if requested, must provide a copy of the videotape at the expense of the party requesting the copy.

(E) Cost of Videotaped Depositions. The party requesting the videotaping must bear the initial cost of videotaping.

Rule 1.310(4), Fla. R. Civ. P. (emphasis added).

13. “Yet, trial courts have broad discretion in overseeing discovery and in protecting persons from whom discovery is sought.” *Citigroup Inc. v. Holtsberg*, 915 So. 2d 1265, 1270 (Fla. 4th DCA 2005) (citing Fla. R. Civ. P. 1.280(c); *Rojas v. Ryder Truck Rental, Inc.*, 641 So. 2d 855, 857 (Fla. 1994)). In fact, upon a showing of good cause, “the court can prohibit or limit discovery in order to protect a person or party from annoyance, embarrassment, oppression, or undue burden or expense.” *Holtsberg*, 915 So. 2d at 1270 (citing Fla. R. Civ. P. 1.280(c)).<sup>2</sup>

14. Moreover, matters that fall outside the subject matter of the pending action, or outside the four corners of the complaint, are irrelevant and not appropriate for inclusion in discovery matters, in any form. *See, e.g., Allstate Ins. Co. v. Langston*, 655 So. 2d 91 (Fla. 1995) (“Discovery in civil cases must be relevant to the subject matter of the case and must be admissible or reasonably calculated to lead to admissible evidence”).

15. Further, although the discovery rules are interpreted broadly, courts have made it clear that discovery is not without limits, but must be tailored to the issues of the case and cannot amount to a “fishing expedition.” *See, e.g., Washington v. Brown & Williamson Tobacco Corp.*, 959 F.2d 1566, 1570 (11th Cir. 1992).<sup>3</sup>

16. In his Amended Petition, Plaintiff seeks only mandamus relief to compel production of records responsive to his Public Records Request.

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<sup>2</sup> Specifically, Rule 1.280(c), Fla. R. Civ. P., provides in relevant part:

Upon motion by a party, and for good cause shown, the court in which the action is pending may protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including 1) that the discovery not be had; 2) that the discovery may be had only on specified terms and conditions; 3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; 4) that certain matters not be inquired into, or that the scope of the discovery may be limited to certain matters....

<sup>3</sup> *See also Linares v. Broward County Sheriff's Office*, 347 Fed. Appx. 424, 42 (11th Cir. 2009) (Discovery rules do not permit a party to go on a “fishing expedition” for relevant information).

17. The City has not yet responded to the Alternative Writ. However, the City's response will include, at least in part, that mandamus relief is not appropriate because all non-exempt, non-confidential responsive records have now been produced.

18. This Court should stay discovery in this matter pending the outcome of the initial hearing, as it is possible that all issues may be resolved at that time.

19. It is well-settled that under these circumstances Florida courts have broad discretion and inherent power to stay discovery when a potentially case-dispositive motion or hearing is pending. *See, e.g., Gleneagle Ship Mgmt. Co. v. Leondakos*, 602 So. 2d 1282, 1284 (Fla. 1992) (allowing limited discovery for resolution of jurisdiction issues but prohibiting "broad, onerous or expansive" discovery as well as discovery addressing the merits of the case); *Elsner v. E-Commerce Coffee Club*, 126 So. 3d 1261 (Fla. 4th DCA 2013) (noting that petitioners could "ask the trial court to exercise its discretion and stay the discovery pending a ruling on the motion to dismiss."); *Capco Props., LLC. v. Monterey Gardens of Pinecrest Condo.*, 982 So. 2d 1211 (Fla. 3d DCA 2008) (quashing an order refusing to stay discovery while a motion to dismiss was pending); *Ferreiro v. Phila. Indem. Ins. Co.*, 928 So. 2d 374, 376 (Fla. 3d DCA 2006) (recognizing that the trial court stayed discovery pending resolution of standing issues); *Carrow v. The Florida Bar*, 848 So. 2d 1283, 1285 (Fla. 2d DCA 2003) (holding that court had the authority to stay discovery "until there was a valid, operable complaint"); *McMillan v. Troutman*, 740 So. 2d 1227 (Fla. 4th DCA 1999) (allowing only limited discovery as to the issue of jurisdiction pending resolution of motion to dismiss for lack of jurisdiction); *Feigin v. Hospital Staffing Services, Inc.*, 569 So. 2d 941, 942 (Fla. 4th DCA 1990) (holding that trial court did not abuse its discretion in staying discovery pending hearing on motion to dismiss).<sup>4</sup>

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<sup>4</sup> As Florida's Rules of Civil Procedure were modeled after the Federal Rules, Florida state courts may look to Federal Rules and decisions for guidance in interpreting Florida's rules. *See Leondakos*, 682 So. 2d at 1283-84. Federal courts consistently hold that dispositive motions resolving facial challenges to a complaint should be resolved prior to the commencement of discovery. *See, e.g., Harlow v. Fitzgerald*, 457 U.S. 800 (1982) (finding that discovery may be stayed to determine the dispositive issue of immunity of government officials); *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1367 (11th Cir. 1997) (holding that "[f]acial challenges to

20. Plaintiff will not be prejudiced by a brief stay in discovery as none of the discovery sought by Plaintiff will impact this Court's ability to conduct the immediate hearing.

21. This motion is made in good faith and not for purposes of delay.

22. A stay of discovery at this time will preserve both judicial resources and the resources of the parties that would otherwise be wasted in responding to discovery requests and preparing for and attending depositions that may well be rendered moot following the immediate hearing.

23. Accordingly, good cause exists to stay discovery pending the outcome of the immediate hearing.

WHEREFORE, for these reasons, Defendant, City of Homestead, respectfully requests that the Court enter an order staying discovery in this matter pending the outcome of the immediate hearing; and for any additional relief this Court deems just and appropriate.

*Respectfully submitted,*

**WEISS SEROTA HELFMAN  
COLE & BIERMAN, P.L.**

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the legal sufficiency of a claim or defense, such as a motion to dismiss based on failure to state a claim for relief, should, however, be resolved before discovery begins. Such a dispute always presents a purely legal question . . . ."); *Petrus v. Bowen*, 833 F.2d 581, 583 (5th Cir. 1987) ("trial court has broad discretion and inherent power to stay discovery until preliminary questions that may dispose of the case are determined").

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by E-mail via State E-portal and by U.S. Mail this 27th day of March, 2019 to: **Dr. James Eric McDonough, pro se**, 32320 SW 199th Ave, Homestead, FL 33030, Email: [Phd2b05@gmail.com](mailto:Phd2b05@gmail.com).

s/ Matthew H. Mandel  
**MATTHEW H. MANDEL**

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA**

**CASE NO:** 19-06869 CA (15)

**CIVIL DIVISION**

**DR. JAMES ERIC MCDONOUGH,**  
Plaintiff,

vs.

**CITY OF HOMESTEAD,**  
a Florida municipal corporation,  
Defendant,

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**PLAINTIFF'S NOTICE OF SERVING FIRST SET OF INTERROGATORIES TO  
DEFENDANT CITY OF HOMESTEAD**

Pro se Plaintiff, Dr. James Eric McDonough, propounds the following interrogatories upon Defendant City of Homestead, to be answered, in writing and under oath, in accordance with Rule 1.340, Florida Rules of Civil Procedure, within thirty days of the date hereof.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this motion has been served by email on counsel for Defendants, Matthew Mandel at [MMandel@WSH-law.com](mailto:MMandel@WSH-law.com) and Matthew Pearl at [mpearl@wsh-law.com](mailto:mpearl@wsh-law.com) as well as City Clerk Elizabeth Sewell at [ESewell@cityofhomestead.com](mailto:ESewell@cityofhomestead.com) on this 14<sup>th</sup> day of March 2019.

Respectfully submitted,

  
Dr. James Eric McDonough, *pro se*



## **INSTRUCTIONS FOR INTERROGATORIES**

You must answer each Interrogatory separately and fully in writing under oath, unless it is objected to, in which event the reasons for the objection shall be stated in lieu of an answer.

The answers must be signed by the party making them, and the objections signed by the attorney making them.

Space has been provided below each Interrogatory for your answer. If you require additional space, you may attach an additional sheet or sheets of paper, which refer to the appropriate Interrogatory.

In answering each Interrogatory:

a. Identify each document, pursuant to the definition of “identify” contained in these Interrogatories, relied upon or which forms a basis for the answer given or which corroborates the answer given or the substance of what is given in answer to each Interrogatory;

b. State whether the information furnished is within your personal knowledge and, if not, the name of each person to whom the information is a matter of personal knowledge; and

c. Identify each person who assisted or participated in preparing and/or supplying any of the information given in answer to or relied upon in preparing the answer to each Interrogatory.

Each subpart of an Interrogatory is a separate Interrogatory for objection. If you object, you must object separately to each subpart and must answer all remaining subparts of each numbered Interrogatory. If you object to an Interrogatory or to a subpart thereof, as calling for information beyond the scope of discovery, you must nevertheless answer the Interrogatory or subpart to the extent that it is not objectionable.

In the event an Interrogatory is objected to on the ground of privilege, identify the privilege asserted and the facts on which the assertion is based. If the Interrogatory objected to relates to

documents, identify each document pursuant to the definition of “identify” contained in these Interrogatories.

In the event the answer to an Interrogatory is “do not know,” “unknown,” “that information was unavailable,” or the like, explain in detail the efforts made to obtain information to answer the Interrogatory.

If you respond to a request for discovery with a response that is complete when made, these Interrogatories are continuing and as such you are nevertheless under a duty to supplement the response to include information thereafter acquired:

a. with respect to any question directly addressed to the identity and location of persons having knowledge of discoverable matters, or to the identity of each person expected to be called as a witness at trial, the subject matter on which the person is expected to testify, and the substance of the person's testimony; and

b. if you obtain information which shows your earlier response was incorrect when made, or your earlier response, although correct when made, is no longer true. Failure to amend your response in light of such information is, in substance, a knowing concealment.

Where an interrogatory does not specifically request a particular fact, but where such fact or facts are necessary to make the answer to that Interrogatory complete, understandable, or not misleading, you should include such fact or facts as part of your answer.

### **DEFINITIONS**

1. “All documents” means every document or group of documents that are known to you or that can be located or discovered by a reasonably diligent search.

2. “McDonough” or “Plaintiff,” refers to Plaintiff, Dr. James Eric McDonough, and also includes any agent, employee, attorney, legal assistant, paralegal, or other person acting or

purporting to act, or who acted or purported to act, on behalf of Dr. James Eric McDonough at any time until the present, or during any other indicated period of time.

3. "CITY" refers to Defendant, the City of Homestead, and any agent, employee or other person acting or purporting to act, or who acted or purported to act, on behalf of the City of Homestead at any time until the present, or during any other indicated period of time.

4. "Communications" includes both written and verbal exchanges including, but not limited to, verbal conversations, telephone calls, letters, notes, memoranda, electronic mail (e-mails), reports, telegrams, confirmations, exhibits, drawings, sketches, minutes, transcripts, summaries and any other "document" as later defined that constitutes, confirms, embodies or otherwise relates to the communications.

5. "Complaint" refers to the FIRST AMENDED VERIFIED PETITION FOR WRIT OF MANDAMUS FOR PRODUCTION OF PUBLIC RECORDS UNDER THE FLORIDA PUBLIC RECORDS ACT filed by Plaintiff in the case known as McDonough v. City of Homestead filed in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Case No. 19-06869 CA (15).

6. "Concerning" includes referring to, responding to, relating to, connected with, supporting, memorializing, regarding, discussing, analyzing, evidencing, showing, depicting, describing, reflecting, implying or constituting.

7. "Demonstrating" includes but is not limited to: referring to, responding to, relating to, connected with, supporting, memorializing, discussing, analyzing, evidencing, showing, depicting describing, reflecting, implying or constituting.

8. "Document" shall be given its broadest possible meaning, and shall denote the original or, if unavailable, a copy of the original, in draft or final form, including "redlined" revisions of any written, typed, printed, recorded, computerized, sorted, or graphic matter, however produced,

animated, stored or reproduced, and of every kind and description. The term “document(s)” shall include but not necessarily be limited to contracts, agreements, drawings, specifications, sketches, letters, correspondence, messages, notes, memoranda, agreements, modifications, change orders, unilateral changes, electronic mail (e-mails) or other communications, records of telephone conversations, books, records, confirmations, drafts, notes, work papers, bills, ledgers, status reports, diaries, daily reports, minutes of meetings, journals, entries in journals, personal work papers, personal work files, diaries, logs, punchlists, transmittals, submittals, financial statements, audit reports, financial data, status reports, calendars, schedules, studies, summaries, reports, charts, books, drawings, diagrams, exhibits, video tapes, photographs, movies, tapes, recordings, transcripts, purchase orders, subcontracts, amendments, proposals, estimates, data sheets, computer printouts, computer diskettes or drives, compact disks (CDs), optical disks, whether sent or received, databases, computer programs, all other records kept by electronic, photographic or mechanical means and all copies or reproductions thereof which are different in any way from the original. The term “document” shall mean all of the above that are in your custody, possession, or control.

9. “Individual” or “Person” means any natural person, any legal or business entity, and/or any public or quasi-public entity.

10. “Identify” or “identity” when used in reference to a natural person means that you shall state:

- a. His/her full name;
- b. His/her present business and home address and telephone number; and,
- c. His/her present employer and his/her present position with such employer.

11. “Identify” or “identity” when used in reference to a document means that you shall state:

- a. The date of its preparation;
- b. Its author and sender;
- c. The addressee or other intended recipient thereof;
- d. Persons who received copies thereof;
- e. The type of document, e.g., letter, memorandum, inventory list, work notes, etc.;
- f. Its title, heading, or other designation, numerical or otherwise;
- g. A summary of its contents or other means of identifying it; and
- h. Its location and custodian.

12. "Person" shall mean any individual, corporation, proprietorship, partnership, trust, association or any other entity.

13. As used herein, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall include each of the other genders. The term "including" means "including without limitation."

14. Any term defined in the Complaint shall have the same meaning herein, unless otherwise defined.

## **INTERROGATORIES**

1. For each request for admissions (served simultaneously with these interrogatories) that you deny or provide a qualified admission, please state all facts supporting such denial or qualified admission. As part of your response, please identify all witnesses with knowledge and/or documents supporting your response.

**ANSWER:**

2. What policy, manual, practice, or procedure is in place to keep track of the time in minutes which is spent on replying to public records request? As part of your response, please identify all witnesses with knowledge and/or documentation supporting your response.

**ANSWER:**

3. Does the CITY have any policy, manuals, practices, or procedures to delay access to public records to any person or group of persons? As part of your response, if you answer in the affirmative what person or group of persons is such a policy, practice, or procedure used against? As part of your answer, please identify all witnesses with knowledge and/or documentation supporting your response.

**ANSWER:**

**VERIFICATION**

\_\_\_\_\_  
Print name:

STATE OF FLORIDA       )  
  ) ss.:  
COUNTY OF \_\_\_\_\_)

BEFORE ME, the undersigned authority, personally appeared \_\_\_\_\_  
And who is [personally known to me] or [who has provided \_\_\_\_\_  
as identification], deposes and says that the facts set forth in the forgoing are true and correct.

WITNESSES my hand and seal on this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public State of Florida

\_\_\_\_\_  
Notary Printed name

My Commission Expires:



**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA**

**CASE NO: 19-06869 CA (15)**

**CIVIL DIVISION**

**DR. JAMES ERIC MCDONOUGH,**  
Plaintiff,

vs.

**CITY OF HOMESTEAD,**  
a Florida municipal corporation,  
Defendant,

**PLAINTIFF, DR. JAMES ERIC MCDONOUGH'S, FIRST REQUEST FOR  
PRODUCTION OF DOCUMENTS TO DEFENDANT**

**INSTRUCTIONS**

1. When producing the documents, please keep all documents segregated by the file in which the documents are contained, and indicate the name of the file in which the document(s) is (are) contained and the name(s) of the documents being produced.

2. If any document requested herein has been lost or destroyed, you are requested to submit in lieu of each such document a written statement that shall:

- (a) describe in detail the nature of the document and its contents;
- (b) identify the person who prepared or offered the document and, if applicable, the person to whom the document was sent;
- (c) specify the date the document was prepared or transmitted, or both; and
- (d) specify, if possible, the date which the document was lost or destroyed and, if destroyed, the conditions of or reasons for such destruction and the persons requesting and performing the destruction.
- (e) provide a copy of the destruction log if it exists.



3. If any documents otherwise required to be produced by this request are withheld, identify each document or item requested herein that is withheld from production on any claim of privilege, work product, or other immunity from production and for each such document or item state:

- (a) the specific basis on which the document or item is being withheld;
- (b) the date and subject matter of the document or item; and
- (c) the author(s), preparer(s), or producer(s) of the document or item pursuant

to the definition of “identify” contained in these Requests.

4. If you consider any of the following requests, or portions thereof, objectionable, separately state which part is objected to and the ground(s) for each objection.

5. Any request for production of a document shall be deemed to require production of each and every thing executed, created, prepared, received or in effect at any time to the present, or during any other indicated period of time.

6. If you respond to a request for discovery with a response that is complete when made, these requests for production are continuing and, as such, you are nevertheless under a duty to supplement the response to include information thereafter acquired.

7. All requests seek items generated or relating to events as alleged in the instant matter.

### **DEFINITIONS**

1. “CITY,” refers to Defendant, the City of Homestead, and any agent, employee or other person acting or purporting to act, or who acted or purported to act, on behalf of the City of Homestead at any time until the present, or during any other indicated period of time.

2. “McDonough,” refers to Plaintiff, Dr. James Eric McDonough, and also includes any agent, employee, attorney, legal assistant, paralegal, or other person acting or purporting to

act, or who acted or purported to act, on behalf of Dr. James Eric McDonough at any time until the present, or during any other indicated period of time.

3. "Communications" include both written and verbal exchanges including, but not limited to, verbal conversations, telephone calls, letters, notes, memoranda, electronic mail (e-mails), text messages, reports, telegrams, confirmations, exhibits, drawings, sketches, minutes, transcripts, summaries and any other "document" as later defined that constitutes, confirms, embodies or otherwise relates to the communications.

4. "Correspondence" include both written and verbal exchanges including, but not limited to, verbal conversations, telephone calls, letters, notes, memoranda, electronic mail (e-mails), text messages, reports, telegrams, confirmations, exhibits, drawings, sketches, minutes, transcripts, summaries and any other "document" as later defined that constitutes, confirms, embodies or otherwise relates to the communications.

5. "Document" shall be given its broadest possible meaning, and shall denote the original or, if unavailable, a copy of the original, in draft or final form, including "redlined" revisions of any written, typed, printed, recorded, computerized, sorted, or graphic matter, however produced, animated, stored or reproduced, and of every kind and description. The term "document(s)" shall include but not necessarily be limited to contracts, agreements, drawings, specifications, sketches, letters, correspondence, messages, notes, memoranda, agreements, modifications, change orders, unilateral changes, electronic mail (e-mails), text messages, or other communications, records of telephone conversations, books, records, confirmations, drafts, notes, work papers, bills, ledgers, status reports, diaries, daily reports, minutes of meetings, journals, entries in journals, personal work papers, personal work files, diaries, logs, punchlists, transmittals, submittals, financial statements, audit reports, financial data, status reports, calendars, schedules, studies, summaries, reports, charts, books, drawings, diagrams, exhibits,

video tapes, photographs, movies, tapes, recordings, transcripts, purchase orders, subcontracts, amendments, proposals, estimates, data sheets, computer printouts, computer diskettes or drives, compact disks (CDs), optical disks, whether sent or received, databases, computer programs, all other records kept by electronic, photographic or mechanical means and all copies or reproductions thereof which are different in any way from the original. The term "document" shall mean all of the above that are in your custody, possession, or control.

6. "All documents" means every document or group of documents that are known to you or that can be located or discovered by a reasonably diligent search.

7. "Person" shall mean any individual, corporation, proprietorship, partnership, trust, association or any other entity.

8. "Identify" with respect to a person means that you will furnish information sufficient to enable Defendants to locate such person, and

a. if the person is a natural person, provide his or her full name, present or last known address, phone number, current and relevant employment, including position, and similar identifying information; and

b. if the person is not a natural person, state whether such entity is a corporation, partnership, or other organization, its full name, present or last known address, phone number, and similar identifying information.

9. "Identify" with respect to a document means and includes the name and address of the custodian of the document, the location of the document, and a general description of the document, including: (1) the type of document (i.e. correspondence, memorandum, facsimile, etc.); (2) the general subject matter of the document; (3) the date of the document; (4) the author of the document; (5) the addressee of the document; and (6) the relationship of the author and addressee to each other.

10. “Concerning” includes referring to, responding to, relating to, connected with, supporting, memorializing, regarding, discussing, analyzing, evidencing, showing, depicting, describing, reflecting, implying or constituting.

11. As used herein, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall include each of the other genders. The term “including” means “including without limitation.”

12. “Demonstrating” includes but is not limited to: referring to, responding to, relating to, connected with, supporting, memorializing, discussing, analyzing, evidencing, showing, depicting describing, reflecting, implying or constituting.

13. The word “or” means “and/or.”

14. The relevant time frame for these requests for production is October 2012 through the date of production unless otherwise specified herein.

15. “Complaint” refers to the FIRST AMENDED VERIFIED PETITION FOR WRIT OF MANDAMUS FOR PRODUCTION OF PUBLIC RECORDS UNDER THE FLORIDA PUBLIC RECORDS ACT filed by Plaintiff in the case known as McDonough v. City of Homestead filed in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Case No. 19-06869 CA (15).

### **DOCUMENTS TO BE PRODUCED**

1. Please provide all documents, correspondence, communications or public records which were generated by McDonough filing his request for records on February 18, 2019.

2. Please provide all documents, correspondence, communications or public records which were generated by McDonough filing his Complaint on March 8, 2019.

3. Please provide all documents, correspondence, communications or public records related to Murguido taking funeral leave between March 19 and March 25, 2015.

4. Please provide all documents, correspondence, communications or public records related to Murguido taking vacation leave between January 15 and January 24, 2015.

5. Please provide all documents, correspondence, communications or public records related to Murguido taking workman's compensation leave between February 7 and March 1, 2019.

6. Please provide all documents, correspondence, communications or public records related to Murguido taking comp used leave between January 15 and January 18, 2014.

7. Please provide all documents, correspondence, communications or public records related to Murguido taking comp used, holiday float, safety used, and vacation leave between April 12 and April 26, 2014.

8. Please provide all documents, correspondence, communications or public records related to Murguido taking comp used, birthday taken, and vacation leave between October 1 and October 11, 2014.

9. Please provide all documents, correspondence, communications or public records related to Murguido taking vacation leave between December 4 and December 10, 2014.

10. Please provide all documents, correspondence, communications or public records related to Murguido taking holiday pay, comp used, and safety used leave between July 4 and July 6, 2013.

11. Please provide all documents, correspondence, communications or public records related to Murguido taking vacation leave between October 2 and October 5, 2013.

12. Please provide all documents, correspondence, communications or public records related to Murguido taking sick leave between October 9 and October 11, 2013.

13. Please provide all documents, correspondence, communications or public records related to Murguido taking birthday taken leave on November 9, 2013.

14. Please provide all documents, correspondence, communications or public records related to Murguido taking vacation leave between November 13 and November 14, 2013.

15. Please provide all documents, correspondence, communications or public records showing the time in minutes which were spent responding to the request for records from the Complaint.

16. Please provide all documents, correspondence, communications or public records showing any attempt to delay, hinder, prevent, or block or McDonough's access to public records.

17. Please provide all records that show how the labor expended in responding to records request of the Complaint was actually monitored, tracked and documented.



18. Since CITY estimates, bills and charges by the minute for records request labor, and are currently allowing 30 minutes of free labor time to produce such records, please provide all records that show how that free 30 minutes of labor is actually monitored, tracked and documented on any and all records requests.

Respectfully submitted,



Dr. James Eric McDonough, *pro se*  
32320 SW 199<sup>th</sup> Ave  
Homestead, FL 33030  
Phone: (571) 245-5410  
Email: [Phd2b05@gmail.com](mailto:Phd2b05@gmail.com)

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this motion has been served by email on counsel for Defendants, Matthew Mandel at [MMandel@WSH-law.com](mailto:MMandel@WSH-law.com) and Matthew Pearl at [mpearl@wsh-law.com](mailto:mpearl@wsh-law.com) as well as City Clerk Elizabeth Sewell at [ESewell@cityofhomestead.com](mailto:ESewell@cityofhomestead.com) on this 14<sup>th</sup> day of March 2019.

Respectfully submitted,



Dr. James Eric McDonough, *pro se*

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA**

**CASE NO:** 19-06869 CA (15)

**CIVIL DIVISION**

**DR. JAMES ERIC MCDONOUGH,**  
Plaintiff,

vs.

**CITY OF HOMESTEAD,**  
a Florida municipal corporation,  
Defendant,

---

**PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS TO DEFENDANT CITY OF  
HOMESTEAD'S**

Pro se Plaintiff, Dr. James Eric McDonough, pursuant to Rule 1.370, Florida Rules of Civil Procedure, hereby requests that Defendant City of Homestead, admit the truth of the matters set forth below. The matters set forth below will be considered admitted unless Respondent serves a written answer or objection addressed to the matter within thirty (30) days after service of this request.

**DEFINITIONS**

Terms not defined herein shall have the meanings ascribed in the Complaint.

1. "CITY," refers to Defendant, the City of Homestead, and any agent, employee or other person acting or purporting to act, or who acted or purported to act, on behalf of the City of Homestead at any time until the present, or during any other indicated period of time.

2. "McDonough," refers to Plaintiff, Dr. James Eric McDonough, and also includes any agent, employee, attorney, legal assistant, paralegal, or other person acting or purporting to act, or who acted or purported to act, on behalf of Dr. James Eric McDonough at any time until the present, or during any other indicated period of time.

3. The terms “concern” or “concerning” or any other derivative thereof shall be construed as referring to, responding to, relating to, pertaining to, connected with, comprising, memorializing, commenting on, regarding, discussing, showing, describing, reflecting, analyzing and constituting.

4. The terms “relating to” or “relating thereto” shall mean, directly or indirectly, refer to, mention, describe, concern, pertain to, arise out of or in connection with or in any way legally, logically, or factually connected with the matter discussed.

5. “Complaint” refers to the FIRST AMENDED VERIFIED PETITION FOR WRIT OF MANDAMUS FOR PRODUCTION OF PUBLIC RECORDS UNDER THE FLORIDA PUBLIC RECORDS ACT filed by Plaintiff in the case known as McDonough v. City of Homestead filed in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Case No. 19-06869 CA (15).

### **ADMISSIONS**

1. Admit that McDonough filed the pertinent request for records on February 18, 2019.
2. Admit that the records were retrieved on February 20, 2019.
3. Admit that the records were not produced to McDonough until March 11, 2019.
4. Admit that CITY pulled the responsive records and then intentionally failed to produce them immediately.
5. Admit that there was no legal justification in delaying the producing of the records after they were retrieved as was done.
6. Admit that CITY held non-exempt and non-confidential records responsive to the pertinent request for records of the Complaint for several weeks after retrieving them.
7. Admit that CITY has held non-exempt and non-confidential records responsive to request(s) for records filed by McDonough in the past has for several weeks after retrieving them before producing them to McDonough.
8. Admit that for the provided records to have been produced it would have required the submission of a request(s) for leave by Murguido.
9. Admit that the request(s) for leave would be a public record.



10. Admit that the request(s) for leave were not provided to McDonough.
11. Admit that the request(s) for leave are non-exempt and non-confidential records.
12. Admit that the request(s) for leave are responsive to McDonough's request.
13. Admit that there was no legal justification to not produce the request(s) for leave.
14. Admit that the requested records did not require any redactions.
15. Admit that CITY either pulled, or was aware of additional records, aside from the request for leave, responsive to the request for records of the Complaint and that CITY then failed to produce those records.
16. Admit that review of the provided records, if it occurred, required less than fifteen (15) minutes of time.
17. Admit that CITY has no policy in place for tracking the number of minutes that are actually expended on producing public records.
18. Admit that it is a violation of Title X, Chapter 119 to either profit from public records requests or bill people for public records requests if CITY cannot verify the ACTUAL cost to produce those records.

Respectfully submitted,



Dr. James Eric McDonough, *pro se*  
32320 SW 199<sup>th</sup> Ave  
Homestead, FL 33030  
Phone: (571) 245-5410  
Email: [Phd2b05@gmail.com](mailto:Phd2b05@gmail.com)

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this motion has been served by email on counsel for Defendants, Matthew Mandel at [MMandel@WSH-law.com](mailto:MMandel@WSH-law.com) and Matthew Pearl at [mpearl@wsh-law.com](mailto:mpearl@wsh-law.com) as well as City Clerk Elizabeth Sewell at [ESewell@cityofhomestead.com](mailto:ESewell@cityofhomestead.com) on this 14<sup>th</sup> day of March 2019.

Respectfully submitted,



Dr. James Eric McDonough, *pro se*

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA**

**CASE NO:** 19-06869 CA (15)

**CIVIL DIVISION**

**DR. JAMES ERIC MCDONOUGH,**  
Plaintiff,

vs.

**RE-NOTICE OF TAKING  
VIDEO DEPOSITION**

**CITY OF HOMESTEAD,**  
a Florida municipal corporation,  
Defendant,

---

TO: Matthew Mandel and Matthew Pearl  
2525 Ponce De Leon Blvd.  
Suite 700  
Coral Gables, Florida 33134

**PLEASE TAKE NOTICE** that the undersigned *pro se* Plaintiff is taking the deposition  
of the following persons at 50 NW 15<sup>th</sup> Street, Suite 110, Homestead, FL 33030:

**Elizabeth Sewell**

**Monday, April 1, 2019**

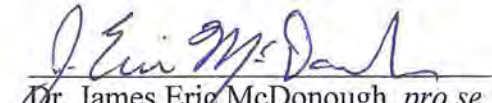
**11:00 A.M.**

This deposition will be taken upon oral examination, before a Notary Public, or any  
officer authorized to administer oaths by the laws of the State of Florida. The deposition will be  
videotaped by Matthew Oakey, 100 N.E. 6<sup>th</sup> Ave., Lot 706, Homestead, Florida 33030. The  
deposition will continue day to day until completed. The deposition is being taken for purposes  
as permitted by the Florida Rules of Civil Procedure.

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Re-Notice of Deposition was emailed to counsel for Defendant Matthew Mandel at [MMandel@WSH-law.com](mailto:MMandel@WSH-law.com) and Matthew Pearl at [mpearl@wsh-law.com](mailto:mpearl@wsh-law.com) this 19<sup>th</sup> day of March 2019.

Respectfully submitted,

  
Dr. James Eric McDonough, *pro se*  
32320 S.W. 199<sup>th</sup> Ave.  
Homestead, FL 33030  
Phone: (571) 245-5410  
Email: [Phd2b05@gmail.com](mailto:Phd2b05@gmail.com)

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA**

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**DR. JAMES ERIC MCDONOUGH,**  
Plaintiff,

vs.

**RE-NOTICE OF TAKING  
VIDEO DEPOSITION**

**CITY OF HOMESTEAD,**  
a Florida municipal corporation,  
Defendant,

---

TO: Matthew Mandel and Matthew Pearl  
2525 Ponce De Leon Blvd.  
Suite 700  
Coral Gables, Florida 33134

**PLEASE TAKE NOTICE** that the undersigned *pro se* Plaintiff is taking the deposition  
of the following persons at 50 NW 15<sup>th</sup> Street, Suite 110, Homestead, FL 33030:

**Fernando Morales**

**Monday, April 1, 2019**

**10:00 A.M.**

This deposition will be taken upon oral examination, before a Notary Public, or any  
officer authorized to administer oaths by the laws of the State of Florida. The deposition will be  
videotaped by Matthew Oakey, 100 N.E. 6<sup>th</sup> Ave., Lot 706, Homestead, Florida 33030. The  
deposition will continue day to day until completed. The deposition is being taken for purposes  
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Respectfully submitted,

A handwritten signature in blue ink, appearing to read "J. Eric McDonough", is written over a horizontal line.

Dr. James Eric McDonough, *pro se*  
32320 S.W. 199<sup>th</sup> Ave.  
Homestead, FL 33030  
Phone: (571) 245-5410  
Email: [Phd2b05@gmail.com](mailto:Phd2b05@gmail.com)

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA**

**CASE NO:** 19-06869 CA (15)

**CIVIL DIVISION**

**DR. JAMES ERIC MCDONOUGH,**  
Plaintiff,

vs.

**RE-NOTICE OF TAKING  
VIDEO DEPOSITION**

**CITY OF HOMESTEAD,**  
a Florida municipal corporation,  
Defendant,

---

TO: Matthew Mandel and Matthew Pearl  
2525 Ponce De Leon Blvd.  
Suite 700  
Coral Gables, Florida 33134

**PLEASE TAKE NOTICE** that the undersigned *pro se* Plaintiff is taking the deposition  
of the following persons at 50 NW 15<sup>th</sup> Street, Suite 110, Homestead, FL 33030:

**Alejandro Murguido**

**Monday, April 1, 2019**

**9:00 A.M.**

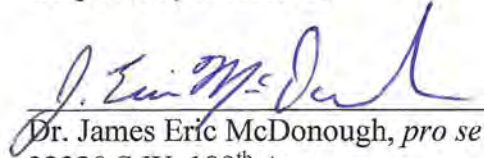
This deposition will be taken upon oral examination, before a Notary Public, or any  
officer authorized to administer oaths by the laws of the State of Florida. The deposition will be  
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as permitted by the Florida Rules of Civil Procedure.



## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Re-Notice of Deposition was emailed to counsel for Defendant Matthew Mandel at [MMandel@WSH-law.com](mailto:MMandel@WSH-law.com) and Matthew Pearl at [mpearl@wsh-law.com](mailto:mpearl@wsh-law.com) this 19<sup>th</sup> day of March 2019.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "J. Eric McDonough", is written over a horizontal line.

Dr. James Eric McDonough, *pro se*  
32320 S.W. 199<sup>th</sup> Ave.  
Homestead, FL 33030  
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